

Senate Bill No. 1701

CHAPTER 403

An act relating to tidelands and submerged lands.

[Approved by Governor September 22, 2006. Filed with
Secretary of State September 22, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1701, Migden. Tidelands and submerged lands: Richardson Bay.

Existing law grants to Marin County certain lands within Richardson Bay to be used for specified purposes in which there is a general statewide interest. Existing law provides that if the lands are not used for the specified purposes within a specified time period, the ownership of the land reverts to the state.

This bill would authorize the State Lands Commission to enter into agreements with Marin County and with private parties that own privately owned tidelands subject to the public trust in Richardson Bay for the sale or exchange of lands, the settlement of boundaries, confirmation of title, and establishment of an agreed ordinary high water mark upon a finding and declaration of specified conditions by the commission. The bill would make legislative findings and declarations regarding the inapplicability of a general statute within the meaning of Section 16 of Article IV of the California Constitution.

The people of the State of California do enact as follows:

SECTION 1. As used in this act:

(a) "BCDC" means the San Francisco Bay Conservation and Development Commission.

(b) "Commission" means the State Lands Commission.

(c) "County" means the County of Marin.

(d) "Grant" means the legislative grant to the county pursuant to Chapter 497 of the Statutes of 1959, as amended by Chapter 1375 of the Statutes of 1969.

(e) "Granted lands" means certain tide and submerged lands in the county conveyed to the county by the grant.

(f) The phrase "sale or exchange" and similar phrases also mean "sale and exchange."

(g) "State" means the State of California.

(h) "Streets" means those tidelands within the grant reserved to the state solely for street purposes. The streets include portions of those streets designated as Manzanita, Madrona, Pescadero, Eureka, Grove, Petaluma,

Humboldt, and Donahue within that portion of Richardson Bay bounded by Teutonia Street, Railroad Avenue, and Yuba Street.

SEC. 2. The Legislature finds and declares all of the following:

(a) Upon its admission to the United States of America on September 9, 1850, the state, by virtue of its sovereignty, received in trust for the purposes of commerce, navigation and fishery, all rights, title, and interest in ungranted tidelands and submerged lands and beds of navigable waterways within its borders. The landward boundary of such waterways is the ordinary high water mark.

(b) Under Section 3 of Article X of the California Constitution, the state may sell tidelands within two miles of any incorporated city, city and county, or town in the state, and fronting on the water of any harbor, estuary, bay, or inlet that were reserved to the state solely for street purposes, to any town, city, county, city and county, municipal corporations, private persons, partnerships or corporations, subject to such conditions as the Legislature determines are necessary to be imposed in connection with the sales in order to protect the public interest, if the Legislature finds and declares that the tidelands are not used for navigation purposes and are not necessary for those purposes.

(c) Pursuant to the provisions of Division 6 (commencing with Section 6001) of the Public Resources Code, the commission is vested with jurisdiction and authority as to all right, title, and interest in tidelands and submerged lands held by the state in trust for the benefit of all the people of the state.

(d) The commission is authorized by Section 6357 of the Public Resources Code to establish by agreement the ordinary high water mark whenever it is deemed expedient or necessary.

(e) Pursuant to Chapter 543 of the Statutes of 1867–1868, as amended by Chapter 388 of the Statutes of 1869–1870, the Board of Tide Land Commissioners sold tideland lots in various areas around San Francisco Bay.

(f) The streets were reserved to the state solely for street purposes. The state also retained title to an area designated as the “Rosedale Canal.”

(g) In 1959, the Legislature granted to the county pursuant to the grant all the rights, title, and interest in the streets, the Rosedale Canal, and other designated areas in the county held by the state by virtue of its sovereignty or by patent from the United States of America pursuant to an act of Congress, 9 Stat. 519 (September 28, 1850). The grant provides that these areas shall “be forever held by said county and its successors, in trust for the uses and purposes and upon the express conditions following.” The grant lists specific authorized uses including the conduct of a harbor and establishes the landward limit of the grant. The grant also permits the county to lease the granted lands “for purposes consistent with the trust upon which said lands are held by the State of California and with the requirements of commerce and navigation at said harbor.” The grant further provides that the lands will revert to the state if not improved consistent with the terms of the grant within a ten-year period.

(h) The grant was amended in 1969. The 1969 amendment required that the lands be used “for purposes in which there is a statewide interest.” This requirement was followed by a list of potential uses, including a harbor, airport, construction of highways, public buildings, a small boat harbor, preservation of land in its natural state and a marine biological reserve.

(i) In 1979, the county submitted a required report to the state indicating, among other things, certain portions of the tidelands granted to the county had been developed for houseboat use and stating that “In the county’s opinion the statutory requirements [of the grant] have been met and that the granted lands should remain in county ownership”

(j) On May 8, 1984, the county leased portions of the granted lands for “any lawful use provided that such use is compatible with the existing houseboat marina.” Portions of the granted lands are now, and have been for many years, used for the permanent mooring of houseboats.

(k) The use of the granted lands for the permanent mooring of houseboats is not a purpose in which there is a statewide public interest, but moving the houseboats would require the construction of new docks and other facilities followed by vessel relocation which would have potentially significant adverse impacts on San Francisco Bay.

(l) The existing boundary configuration under which the state retained sovereign interest in the streets under Richardson Bay while lots in Richardson Bay were placed in private ownership was premised on the assumption that Richardson Bay would be filled and the streets used for pedestrian and vehicle access. This assumption as to the future use of this area is no longer valid.

(m) The existing configuration of the underwater streets leased by the county, located within the houseboat marinas, and running between privately owned lots in the houseboat marinas is a hindrance to the use of these sovereign lands for public trust purposes because the streets are narrow and in that location are not suitable for commerce or navigation.

(n) The following portions of the granted lands are not, as a practical matter, used for navigation purposes and are not necessary for such purposes: the portions of the granted lands within the existing houseboat marina located southwest of Humboldt Avenue (including Petaluma Avenue between Manzanita and Grove Streets, and Grove and Eureka Streets between Petaluma and Humboldt Avenues); those portions of Manzanita and Pescadero Streets southwest of Humboldt Avenue that are immediately adjacent to the existing houseboat berths; the filled portions of Madrona and Eureka Streets; and those portions of Grove and Eureka Streets northeast of Humboldt Avenue that are immediately adjacent to the existing houseboat berths in the houseboat marina located northeast of Humboldt Avenue. Shallow water depths in and immediately adjacent to the houseboat marinas render the marinas unsuitable as recreational boat harbors or for use by most shallow draft watercraft such as sailboats and larger recreational vessels. The houseboats themselves are an obstacle to navigation because they are moored for extended periods in a single location, do not float at most stages of the tide, and cannot move under

their own power. The dredging necessary to render the houseboat marinas and immediately adjacent areas usable for other harbor purposes is currently impracticable and ecologically undesirable due to benthic contamination. The houseboat marinas are also too shallow to be used for navigation by even small, shallow draft commercial watercraft. In addition, commercial port use is incompatible with existing surrounding land uses and water depths. Port use and water-related industrial uses or cargo transport use in or adjacent to the houseboat marinas are not desirable or feasible, even with significant dredging because of surrounding incompatible land uses and distance from deep-draft navigation channels. BCDC's San Francisco Bay Plan, and San Francisco Bay Area Seaport Plan designations and needs assessments have not identified port or water-related industrial uses for Richardson Bay.

SEC. 3. It is in the public interest for the commission to enter into, and the commission is authorized to enter into, one or more agreements with the county and with the lessees of the granted lands who also own privately owned tidelands subject to the public trust in Richardson Bay for the sale or exchange of lands, the settlement of boundaries, confirmation of title, and the establishment of an agreed ordinary high water mark, if the commission finds and declares that the agreement and underlying sale or exchange, boundary settlement, confirmation of title, and agreed ordinary high water mark meet all of the following criteria:

(a) The agreement is consistent with the findings and declarations in Section 2 of this act.

(b) The commission has independently conducted a review and analysis of the pertinent information bearing upon the relevant parcels and water bodies, including a review of all documents, surveys, and deed descriptions of record. The commission has also physically inspected and investigated the parcels included in the agreement, and has concluded, based on its findings, that the boundary lines, including without limitation the agreed ordinary high water mark, are supported by fact and law.

(c) The agreement provides the public with a significant public benefit because it will modify the existing pattern of state ownership to consolidate the state's sovereign ownership in this property in a pattern that will enhance the state's use of this property for public trust purposes.

(d) The agreement provides that lands not needed for navigation, not providing statewide public trust benefits, and currently used for private residential purposes will be sold or exchanged for privately owned open water areas that will be used for purposes providing statewide public trust benefits, including fishery, recreation, and open space.

(e) The agreement provides the public with a significant public benefit by establishing an agreed ordinary high water mark along the affected shoreline of Richardson Bay.

(f) A sale or exchange pursuant to such an agreement will not diminish the amount of property potentially available for public trust uses because the lands conveyed to a private party pursuant to the agreement which are

bayward of the agreed ordinary high water mark shall remain subject to the public trust.

(g) The agreement to sell or exchange property provides the public with a significant public benefit because the property which the state will receive pursuant to a sale or exchange provided for in the agreement will be held by the state as state owned sovereign tide and submerged lands, and the monetary value of the interests in property that the state will receive pursuant to the agreement and sale or exchange will be equal to or greater than the monetary value of the property being sold or exchanged to a private party to the agreement.

SEC. 4. To effectuate the foregoing, the commission is authorized to do all of the following:

(a) Convey to a private party by patent the right, title, and interest held by the state by virtue of its sovereign trust title to tide and submerged lands in and to the tidelands and submerged lands granted to the county under the grant, reserving to the state a public trust easement interest (the *jus publicum*) and subject to additional reservations as the commission may determine to be appropriate.

(b) Receive and accept on behalf of the state in its sovereign capacity lands or an interest in lands, conveyed to the state in its sovereign capacity by the county or by a private party pursuant to this act and pursuant to a sale or exchange authorized, ratified, or confirmed by this act.

(c) Convey to the county by patent all of the right, title, and interest of the state in lands conveyed to the state in its sovereign capacity by the county or by a private party pursuant to this act and pursuant to a sale or exchange authorized, ratified, or confirmed by this act, subject to terms, conditions, and reservations as the commission may determine are necessary to meet the requirements of Section 3 of this act.

(d) Determine or settle as part of a sale or exchange, the title to, the location of, or the boundaries of the granted lands or other boundary lines that the commission deems necessary to effectuate the sale or exchange or the purposes of this act.

(e) Confirm, by quitclaim of all of the right, title, and interest of the state, that lands claimed in fee by a private party and not subject to tidal action on and after February 22, 1980, are not subject to the public trust.

SEC. 5. In the case where the state, pursuant to this act conveys tidelands and submerged lands transferred to the county pursuant to the grant, the state shall reserve all minerals and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the state or to its successors and assignees, except that, notwithstanding the grant or Section 6401 of the Public Resources Code, any reservation shall not include the right of the state or its successors or assignees in connection with any mineral exploration, removal, or disposal activity, to do either of the following:

(a) Enter upon, use, or damage the surface of the lands or interfere with the use of the surface by a grantee or by the grantee's successors or assignees.

(b) Conduct mining activities of any nature whatsoever above a plane located 500 feet below the surface of the lands without the prior written permission of a grantee of the lands or the grantee's successors or assignees.

SEC. 6. An agreement entered into pursuant to this act, shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding in a court of competent jurisdiction to determine the validity of the agreement commenced within 60 days after the recording of the agreement.

SEC. 7. (a) An action may be brought under Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure by the parties to an agreement entered into pursuant to this act to confirm the validity of the agreement. Notwithstanding Section 764.080 of the Code of Civil Procedure, the statement of decision in the action shall include a recitation of the underlying facts and a determination as to whether the agreement meets the requirements of this act, Sections 3 and 4 of Article X of the California Constitution, and any other law applicable to the validity of the agreement.

(b) For purposes of Section 764.080 of the Code of Civil Procedure and unless otherwise agreed in writing, an agreement entered into pursuant to this act shall be deemed to be entered into on the date it is executed by the executive officer of the commission, who shall be the last of the parties to sign prior to the signature of the Governor. The effective date of the agreement shall be deemed to be the date on which it is executed by the Governor pursuant to Section 6107 of the Public Resources Code.

SEC. 8. A sale or exchange, boundary settlement, confirmation of title, or agreed ordinary high water mark made, established, or accomplished pursuant to this act is hereby found to be of statewide significance, and, therefore, an ordinance, charter provision, or other provision of local law inconsistent with this act shall not be applicable to the exchange or sale.

SEC. 9. The Legislature finds and declares that, because of the unique circumstances applicable only to the lands within Richardson Bay described in this act, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.